REMARKS

Claims 1-26 are pending in the application. Claims 12-26 are cancelled herein, as provided under 37 C.F.R. 1.116(b)(1) for 'after final' practice. No claims are newly added, withdrawn, or amended herein.

Claims 1, 4-17 and 22-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Alt (6,829,503 B2).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt as applied to claim 1 above, and further in view of Takehara et al (2002/0022787 A1)(Takehara) in view of Duong et al (6,740,518 B1)(Duong).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt as applied to claim 1 above, and further in view of Baura et al (6, 561,986 B2)(Baura).

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt as applied to claim 12 above, and further in view of Carter et al (5,674,264)(Carter).

Herein, 'the Office Action' or 'the Final Office Action' refers to the Final Office Action received on November 17, 2008 unless otherwise indicated.

Claim Objections

Claim 3 is objected to due to an inadvertently underlined letter 's' in the word "values" in the third line of the claim. The objection is traversed herein by removal of the underlining. Inasmuch as the correction does not constitute an amendment of the claim, the claim is appropriately labeled "Previously Presented" herein, rather than "Currently Amended".

Applicants further acknowledge the withdrawal of the objection from claim 9, and thank the Examiner for his full and courteous consideration of applicants' submitted remarks in this regard.

Drawing Objection

Applicants acknowledge the withdrawal of the objection from the drawings, and thank the Examiner for his consideration of applicants' submitted remarks in this regard.

Claim Rejections – 35 U.S.C. § 112

Applicants acknowledge the withdrawal of the rejection of claims 7 and 8, and thank the Examiner for his consideration of applicants' submitted remarks in this regard.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 4-17 and 22-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Alt. The rejections of claims 12-17 and 22-26 are rendered moot by cancellation of those claims herein. Thus, applicants address the rejections of claims 1 and 4-11 herein.

The Office Action asserts that Alt discloses applicants' recited limitations of independent claim 1, including "positioning members of the first set of electrodes on *an external surface* of the body". However, applicants respectfully submit that the assertions, based as they are on the Office's interpretation of applicants' recited claim limitations, are inconsistent with the *substantial evidence* in both the applicants' specification and the asserted references themselves, and therefore constitute both factual and legal error.

"The standard of review applied to findings of fact is the "substantial evidence" standard under the Administrative Procedure Act (APA). See *In re Gartside*, 203 F.3d 1305, 1315, 53 USPQ2d 1769, 1775 (Fed. Cir. 2000). See also MPEP § 1216.01."

Applicants further submit that a full consideration of applicants' remarks and arguments presented herein will provide a proper basis for the Examiner to find traversal of the asserted rejections, in view of the substantial evidence on the record.

Applicants renew all arguments presented in the preceding response to the Non-Final Office Action mailed June 5, 2008, and respectfully submit the remarks and arguments detailed below.

The Broadest Reasonable Interpretation of Applicants' Claims Must be Consistent with Applicants' Specification

Applicants acknowledge that the Office may give the claims their broadest reasonable interpretation (MPEP 2111). However, an interpretation is only reasonable and proper if made "in light of the specification as it would be interpreted by one of ordinary skill in the art", *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). As recently stated by the Court of Appeals for the Federal Circuit (CAFC) en banc decision in *Phillips v. AWH Corp.* (415 F.3d 1303, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005)), "The scope of the claimed invention must be clearly determined by giving the claims the "broadest reasonable interpretation *consistent with the specification*." (MPEP 2141(II)(A), citing *Phillips v. AWH Corp.* at 1316, (emphasis provided).

> Indeed, the rules of the PTO *require* that application claims must "conform to the invention *as set forth in the remainder of the specification* and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that *the meaning of the terms in the claims may be*

> *ascertainable by reference to the description.* (MPEP 2111, 37 CFR 1.75(d)(1)).

In *Phillips*, the court prohibited the Office from interpreting a claim limitation in a manner that is inconsistent with applicants' specification. "Our cases recognize that the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, *the inventor's lexicography governs.*" This rule is echoed throughout CAFC precedent, as described in *Phillips*.

"The claims are directed to the invention that is described in the specification; they do not have meaning removed from the context from which they arose." (*Phillips* at 1316, citing *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1352 (Fed.Cir.2001)).

> A fundamental rule of claim construction is that *terms in a patent document are construed with the meaning with which they are presented in the patent document.* Thus claims must be construed so as to be consistent with the specification, of which they are a part." (*Phillips* at 1316, citing *Merck & Co. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371 (Fed.Cir.2003)(emphasis provided).

> And definitively, the *en banc* CAFC in *Phillips* stated;

> Ultimately, the interpretation to be given a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to envelop with the claim. The construction that stays true to the claim language and *most naturally aligns with the patent's description* of the invention *will be*, in the end, *the correct construction.* (*Phillips* at 1316, citing *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed.Cir.1998)(emphasis provided).

Thus, applicants respectfully submit that where there is any dispute regarding the meaning and or scope of terms expressly recited in the claims, the Office give due consideration to substantial evidence presented in the applicants' specification, to determine what the applicants "actually invented and intended to envelop with the claim", as through the eyes of one 'skilled in the art'.

Applicants amended independent claim 1 to recite the limitations "on an *external surface* of the body". These amendments provide claims that are "precise, clear, correct, and unambiguous" to one having skill in the art, both on their face and consistent with the substantial evidence provided in applicants' specification. Applicants now call the Office's attention to this substantial evidence, and request full and proper consideration thereof.

Applicants' Invention is Expressly Directed to a Non-Invasive Apparatus and Method, Consistent with Electrode Placement on 'An External Surface of the Body' as Recited in the Claims

Applicants' specification clearly and consistently describes non-invasive apparatus and methods. For example, applicants describe the technical field of the invention as that involving non-invasive measurements.

> The present invention relates to determining the presence of a volume of fluid and, in particular, to methods and apparatus that process *noninvasive electrical bio-impedance measurements* to determine the presence of fluid volume in mammalian tissue, (Paragraph [0001])(emphasis provided).

Likewise, applicants' abstract describes, "Methods and apparatus . . . process *noninvasively measured* electrical bio-impedence [sic] values".

Further still, applicants describe a problem to be solved by the current invention thusly:

> What is needed are methods and apparatus that can *non-invasively* detect fluid shifts which could cause onset of shock. More particularly, methods and apparatus are needed that *non-invasively* measure electrical bio-impedance values and perform a technique that indicates the nature of a change, if any, from a homeostatic fluid condition in mammalian tissue. (Paragraph [0011])

Further, applicant describes a need for "field-deployable tools that can be used to detect presence of internal bleeding . . . in both military and civilian emergency medicine and trauma sectors".

Applicants' claimed electrodes provided "on an external surface of the body" are entirely consistent with the express intent to enable field-deployable, non-invasive impedance measurements in emergency situations.

By contrast, the assertion in the Office Action that the surgically, subcutaneously implanted electrodes of Alt could be encompassed by the recited claim limitations of "on an *external surface* of the body" is inconsistent with applicants' repeated, consistent, and unambiguous description of non-invasive apparatus and methods.

No Limitations Need Be Imported from the Specification to Interpret the Recited Limitation(s) "External Surface of the Body" Consistent with Applicants' Specification

While applicants acknowledge that limitations may not be imported from the specification into the claims unnecessarily, applicants respectfully submit that no such importation is necessary here. Rather, the limitation(s) "on an external surface of the body" is/are already expressly recited in claim 1. The Office need only accord the proper interpretation to the limitation(s). As discussed, a proper interpretation must be consistent

with applicants' specification, which describes what applicants invented and intend to encompass by the recited claim language.

> Indeed, the rules of the PTO *require* that application claims must "conform to the invention *as set forth in the remainder of the specification* and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that *the meaning of the terms in the claims may be ascertainable by reference to the description.* (MPEP 2111, 37 CFR 1.75(d)(1)).

Thus, any interpretation of "on an external surface of the body" must be consistent with applicants' described and intended *non-invasive* apparatus and methods.

Nor are the applicants required to *expressly* define each claim term in the specification.

> [R]equiring that any definition of claim language in the specification be express, is inconsistent with our rulings that the specification is 'the single best guide to the meaning of a disputed term,' and that the specification 'acts as a dictionary when it expressly defines terms used in the claims *or when it defines terms by implication.*' *Phillips* at 1321, citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996); *Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300 (Fed.Cir.2004)(emphasis provided).

The term 'non-invasive', in the medical context of the applicants' specification, is used consistently with its plain meaning; "not involving penetration (as by surgery or hypodermic needle) of the skin of the intact organism (~diagnostic techniques)", (Merriam Webster's Collegiate Dictionary, 1995, page 790). Conversely, an 'invasive' apparatus or procedure would be one "involving entry into the living body (as by incision or by insertion of an instrument) (~diagnostic techniques)", (Merriam Webster's Collegiate Dictionary, 1995, page 616), such as the Alt electrodes.

As would be recognized by one having skill in the art, placement of an electrode on "an external surface of the body", without penetrating the skin, is consistent with applicants' non-invasive intent and description. Nor does penetration of the skin by an electrical current contradict this interpretation. Injection of current does not require penetration of the skin as by surgery or a needle, or incision or insertion of an instrument. As would be clear to one having skill in the art based on the substantial evidence, applicant intends and describes such non-invasive methods as involving injection of an electrical current into the tissues of the body.

Further, one having skill in the art would recognize that the plain meaning of 'non-invasive' correspondingly provides the operative and intended interpretation of "external surface of the body" as "the skin of the intact organism" (i.e., "not involving penetration . . .

of the skin"). Skin is "the external limiting tissue layer of an animal body esp. when forming a tough but flexible cover relatively impermeable from without while intact", (Merriam Webster's Collegiate Dictionary, 1995, page 1100).

This interpretation of "external surface of the body", as recited in applicants' claims, is clearly consistent with and intended throughout applicants' specification. "FIGS. 1A and 1B are respective top and bottom views of an exemplary multiple electrode assembly 10 formed on a patch that can be applied on the skin of a patient", (paragraph [0030]).

As stated, interpreting the expressly recited claim limitation(s) "on an external surface of the body" does not require importing any limitations from the specification into the claims. All that is required is that the Office properly accord the consistent and intended meaning, as described throughout applicants' specification, to the limitations expressly recited in the claims by applicants.

The Office's Asserted Claim Scope is Neither Reasonable in View of, Nor Consistent with, Applicants' Specification, and Therefore is Improper

"The scope of the claimed invention must be clearly determined by giving the claims the "broadest *reasonable* interpretation *consistent with the specification*." (MPEP 2141(II)(A), citing *Phillips v. AWH Corp.* at 1316, (emphasis provided).

The Office asserts that applicants' claims, which specifically recite "electrodes on an *external surface* of the body", can be reasonably interpreted to encompass electrodes placed 'on *any* surface', and more particularly, can encompass the subcutaneously implanted electrodes of Alt.

> [T]he current claim language can still be interpreted as though the device can be placed *on any surface* as long as the electrodes have the ability to inject current and measure the return current in order to calculate the impedance of the body", (Office Action, page 11)(emphasis provided).
>
> While the device of Alt is implanted, the device is placed such that the device is on an *external surface of the rib cage* in order to obtain the impedance measurements. The rib cage of Alt is analogous to the claimed 'body'. Therefore, Alt still teaches the claimed invention. (Office Action, pages 10-11).

However, these assertions cannot be proper or correct. The breadth of scope asserted by the Office finds no support in the applicants' specification, and would fail under 35 U.S.C. § 112, paragraph 1 if asserted by the applicants. Nowhere do applicants describe electrodes implanted within a mammalian body, whether subcutaneously or on any other internal surface. Further, such assertions directly contradict the substantial evidence on the record, as would be recognized by one having skill in the art at the time applicants filed the application.

The assertions ignore the recited limitation(s) of "an *external* surface of the body". Not 'any surface' can be an *external* surface of the *body* consistent with applicants' described non-invasive method and electrodes. The Office's assertion that the claims can encompass electrodes placed 'on any surface', if carried to its logical conclusion, would include within its scope the 'external surface' of nearly any *internal* body structure that can be construed to have an outer surface (e.g., the rib cage, the heart, the bladder, the lungs, etc.). However, placement of an electrode on any of those 'external surfaces' would *require* invasively penetrating an 'external surface of the body', contrary to applicants' expressed non-invasive intent.

Rather, applicants expressly claim electrodes placed 'on an external surface of the body', which can only reasonably be interpreted, consistent with applicants' specification, as meaning *on*, not beneath, the skin (the external limiting tissue layer of an animal body).

In particular, applicants do not claim or intend to encompass 'any surface', and do not claim or intend to encompass a surface which can be reached only by invasive methods. Applicants' specification makes this quite clear throughout. Therefore, applicants' did not chose to recite limitations directed toward 'an external surface *of the rib cage*', but rather "an external surface *of the body*", arising in the context of applicants' consistently described *non-invasive* apparatus and method. By contrast, Alt's electrodes necessarily *require invasive* implantation. This conclusion is unavoidable based upon the substantial evidence on the record, and as the Office recognizes.

With regard to its described electrodes, Alt expressly states. "It is implanted in a *subcutaneous pocket* formed by the surgeon in the patient's chest", (Col. 1, lines 42-44)(see also FIG 2). "[T]he device is prevented from turning *within its subcutaneous pocket* which would otherwise position the surface electrodes at the *wrong side-namely, toward the exterior of the patient's body*", (Col. 2, lines 64-Col. 3, line 1)(emphasis provided).

The plain meaning of 'subcutaneous' is, "being, living, used, or made *under the skin*" (Merriam Webster's Collegiate Dictionary, 1995, page 1171)(emphasis provided). One having skill in the art, therefore, would recognize that the electrodes of Alt, implanted 'in a subcutaneous pocket', necessarily require invasive surgical implantation, and are therefore entirely inconsistent with applicants' described non-invasive apparatus and methods.

A penetration of the skin, such as would be required to implant the subcutaneous electrode of Alt below the skin and on the external surface of the rib cage (as asserted in the Office Action), necessarily requires an invasive apparatus and method (according to the plain meaning provided above). Thus, the electrodes of Alt necessarily falls outside the scope of

applicants' specification, intent, and the proper scope of applicants' recited claim limitations, as one having skill would recognize in view of the substantial evidence on the record.

For at least the reasons provided, applicants respectfully submit that claim scope asserted by the Office in the Final Office Action contradicts the plain meaning of the claim terms, exceeds the scope of applicants' specification, and is therefore improperly broad.

The Office Concedes that Alt Fails to Disclose an Electrode 'Positioned...on an External Surface of the Body', and the Asserted Claim Scope Constitutes an Improper Taking of Official Notice

In the Office Action, the Examiner expressly states, "Alt discloses the implantation of the device such that the device is placed *in a pectoral muscle* outside the rib cage", (Final Office Action, page 10)(emphasis provided). One having skill in the art would not consider a device implanted '*in* a muscle' to be positioned '*on* an external surface'. Nor would one having skill in the art consider an electrode to be 'on an external surface the rib cage' if it is 'in a pectoral muscle outside the rib cage' as asserted by the Office.

The Examiner seems to take the position that any electrode which lies outside the rib cage, no matter whether imbedded in muscle tissue or separated from the rib cage by intervening body tissue, is reasonably considered to be 'on the *surface* of the rib cage'. Additionally, the Office seems to take the position that an electrode positioned anywhere 'outside the rib cage' is the same as an electrode positioned "on an external surface of the body". This position is demonstrated in the Examiner's assertion that "[t]he rib cage of Alt is analogous to the claimed 'body'", (Office Action, pages 10-11).

With all due respect, the Office's asserted interpretation ignores the precision and purpose of differentiating language used within the medical arts to distinguish the various parts of, and relationships between, anatomical structures (e.g., 'in', 'on', 'outside', etc.). More particularly, the assertion accords no relevance to the applicants' selection and express use of definite limiting terms (i.e., "*on* the external surface") to precisely, clearly, correctly, and unambiguously define the scope of the claims.

Likewise, while the Examiner concedes that "the device of Alt is implanted . . . in order to obtain the impedance measurements", the Examiner seems to be asserting that one having skill in the art would consider such implantation to be 'non-invasive', and therefore consistent with applicants' specification.

Thus, applicants respectfully submit the Examiner seems to be taking Official Notice of Facts not contained in the record, based on the Examiner's own understanding.

> The Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings. (MPEP 2144.03, citing Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697.)

The applicants can find no concrete evidence in the record to support the conclusions reached and asserted by the Office, and respectfully submit that no such evidence has been provided. Rather, the substantial evidence in the record, both in applicants' specification and claims, as well as applicants' remarks and arguments submitted in the several responses, expressly direct the scope of the claims to non-invasive apparatuses and methods.

Applicants' direct the Examiner's attention to the asserted Alt reference, which expressly distinguishes the 'exterior of the patient's body' from the asserted 'external surface' of a rib cage. "[T]he device is prevented from turning within its subcutaneous pocket which would otherwise position the surface electrodes at the wrong side [relative to the rib cage]—namely, toward the *exterior* of the patient's *body*", (col. 2, line 64 – col. 3, line 1). Here, Alt expressly describes that the exterior of the patient's *body* is at the 'the wrong side' of the subcutaneous pocket relative to the rib cage.

By referring to the '*exterior* of the patient's *body*', Alt indicates that the term 'body' has a meaning that is distinct from that of 'rib cage', and by clear implication, that the exterior surface of the body is distinct from the asserted external surface of the rib cage. According to Alt, the asserted 'external surface' of the rib cage and the exterior of the body lie in opposite directions relative to implanted subcutaneous electrodes described therein, with the 'exterior of the patient's body' being on 'the wrong side' relative to the electrodes. In light of this express description, the Office's assertion that "rib cage of Alt is *analogous* to the claimed 'body' finds no support in, and is logically contradicted by Alt.

Additionally, one having skill in the art would understand that a device non-invasively positioned 'on an external surface of the skin' must be configured for such placement, to accommodate the effects of skin impedance, and/or to ensure secure attachment with the skin, for example. As applicant describes, the electrodes are configured with "an electrically conductive gel to couple to the body surface" (paragraph [0028]).

> [T]he conductive gel connects the electrode to the surface of the body. The substrate or "backing" of the electrode patch has an adhesive to secure it to the body surface . . . Alternatively, an electrically conductive adhesive may be used as the gel to electrically connect and adhere the electrode to the body surface.

One having ordinary skill in the art will recognize that a device surgically implanted in a subcutaneous pocket in the pectoral muscle would not require such configuration. Further, one having skill in the art would recognize that conductive gels and/or adhesives introduced subcutaneously within a patient, besides being unnecessary, could in fact cause an adverse reaction. Therefore, a subcutaneous, intramuscular pocket overlying the rib cage would not be recognized as being 'analogous to the claimed' "on an external surface of the body" by one having skill in the art, contrary to the Office's assertions.

Applicants further respectfully submit that Alt teaches away from the Office's assertion that the external surface of the rib cage can be considered an 'external surface of the body' consistent with applicants' specification. "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984);(MPEP 2141.02(VI)). Alt's expressly invasive procedure and device lead away from applicant's non-invasive approach, and nowhere does Alt describe a non-invasive embodiment.

For at least the numerous reasons discussed above and in the prior responses, applicants respectfully submit that Alt fails to disclose at least applicants' recited limitations of independent claim 1, including "positioning members of the first set of electrodes on *an external surface* of the body".

Therefore, applicants submit the Office Action fails to establish a *prima facie* basis for the asserted 35 U.S.C. §102(e) rejections of independent claim 1 over Alt, and request withdrawal of the rejection therefrom. Likewise, inasmuch as claims 4-11 include at least the distinct limitations of independent claim 1, from which they depend either directly or indirectly, applicants likewise request withdrawal of the 35 U.S.C. §102(e) rejections of claims 4-11.

Claim Rejections – 35 U.S.C. § 103

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt as applied to claim 1 above, and further in view of Takehara in view of Duong. However, as described above, Alt fails to disclose, teach, or suggest at least the recited limitations of independent claim 1, including "positioning members of the first set of electrodes on *an external surface* of the body".

Although claim 2 is rejected under 35 U.S.C. § 103(a), the rejection necessarily rests upon the assertion that Alt *prima facie* discloses the limitations not asserted to be rendered obvious in view of Takehara and/or Duong. That is, the limitations of claim 1. As specified

in 37 C.F.R. § 1.75(c), "Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." Therefore, the proper examination of a dependent claim necessarily requires full consideration of the limitations of the claim from which the claim being examined depends.

However, Takehara in view of Duong fail to correct the failures of Alt in this regard, nor does the Office Action so assert. Therefore, the asserted combination of Alt, Takehara, and/or Duong likewise and necessarily fails to disclose or render obvious the recited limitations of applicants' claim 2.

For at least these reasons, applicants respectfully submit that the combined references fail to disclose at least the limitations of applicants' claim 2. Therefore, applicants respectfully submit that claim 2 is allowable over the references, either alone or when combined, and request withdrawal of the 35 U.S.C. § 103(a) rejection from claim 2.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt as applied to claim 1 above, and further in view of Baura. However, as described above, Alt fails to disclose, teach, or suggest at least the recited limitations of independent claim 1, including "positioning members of the first set of electrodes on *an external surface* of the body".

Although claim 2 is rejected under 35 U.S.C. § 103(a), the rejection necessarily rests upon the assertion that Alt *prima facie* discloses the limitations not asserted to be rendered obvious in view of Baura. That is, the limitations of claim 1. As specified in 37 C.F.R. § 1.75(c), "Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." Therefore, the proper examination of a dependent claim necessarily requires full consideration of the limitations of the claim from which the claim being examined depends.

However, Baura fails to correct the failures of Alt in this regard, nor does the Office Action so assert. Therefore, the asserted combination/modification of Alt with Baura likewise and necessarily fails to disclose or render obvious the recited limitations of applicants' claim 2.

For at least these reasons, applicants respectfully submit that the combined references fail to disclose at least the limitations of applicants' claim 3. Therefore, applicants respectfully submit that claim 3 is allowable over the references, either alone or when combined, and request withdrawal of the 35 U.S.C. § 103(a) rejection from claim 3.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt as applied to claim 12, and further in view of Carter. However, the rejections are rendered moot by the cancellation of claims 18-22 herein.

CONCLUSION

Accordingly, applicants respectfully submit that claims 1-11 are unambiguously and patentably distinct from the asserted references, and requests allowance of the claims without further delay. Applicants request the Examiner's courteous and full consideration of the included remarks, to efficiently prosecute this application to a final determination. The Examiner is encouraged to telephone the undersigned at (503) 226-1191 if it appears that an interview would be helpful in advancing the case.

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number (571) 273-8300 on December 1, 2008.

NAME

Respectfully submitted,

Patrick D. Boyd
Reg. No. 54,671
Ater Wynne LLP
222 SW Columbia, Suite 1800
Portland, Oregon 97201

Customer No. 35940